

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF A PROTEST FILED ON)
JANUARY 14, 2004 BY KIRKWOOD MOTORS,)
INC., AGAINST THE PROPOSED RELOCATION)
BY THE DAIMLERCHRYSLER MOTORS) PSC DOCKET NO. 04-13MV
COMPANY, LLC, OF A DODGE DEALERSHIP)
IN NEW CASTLE COUNTY, DELAWARE)
(FILED JANUARY 14, 2004))

ORDER NO. 6352

This 10th day of February, 2004, the Commission determines and Orders the following:

1. Under the provisions of 6 Del. C. § 4915, this Commission is directed to receive, consider, and act upon any protest filed by an existing new motor vehicle dealer concerning the proposed establishment, in a specified area, of an additional new motor vehicle dealer of the same line-make or the proposed relocation, within specified areas, of an existing new motor vehicle dealership of the same line-make.

2. On December 22, 2003, DaimlerChrysler Motors Company, LLC ("DCMC"), gave notice to the Commission that it intended to relocate a Dodge automobile dealership franchise from its present location at 168 North DuPont Highway, New Castle, Delaware, to a new location at 196 South DuPont Highway, New Castle, Delaware. The notice indicated that the relocation would occur on or after November 1, 2004.¹

¹The notice identifies the relocated dealership as Carman Dodge, Inc.

3. On January 14, 2004, Kirkwood Motors, Inc. ("Kirkwood"), an existing new motor vehicle dealer selling Dodge automobiles, filed a protest, under the provisions of 6 Del. C. § 4915, challenging DCMC's announced intention to relocate the new motor vehicle franchise for Dodge automobiles.²

4. Under the provisions of 6 Del. C. § 4915(e) & (f), the Commission must conduct a hearing and render a decision concerning the filed protest within ninety (90) days from the date of the filing of the protest. Consequently, the Commission now refers the matter to its Hearing Examiner to conduct the proceedings contemplated by 6 Del. C. § 4915(a), (c)-(e). The Hearing Examiner should proceed as expeditiously as possible (while still allowing for a fair hearing) in order to afford the Commission the opportunity to render a final decision in this matter prior to the deadline set forth in § 4915(e) (and enforced by § 4915(f)).

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to the provisions of 26 Del. C. § 502 and 6 Del. C. § 4915(e), Robert P. Haynes is hereby designated as the Hearing Examiner for this matter and authorized to schedule and conduct such proceedings (including an evidentiary hearing) as may be required, or appropriate, for the proper and prompt resolution of this protest under the provisions of 6 Del. C. § 4915. At the conclusion of such proceedings, Hearing Examiner Haynes shall file a Report with

²DCMC originally sent its notice of relocation to Kirkwood. See 6 Del. C. § 4915(a). Consequently, it would appear that Kirkwood is within the relevant market area (as defined by 6 Del. C. § 4902(10)) of the proposed site for relocation.

the Commission setting forth proposed findings and a recommended decision. Hearing Examiner Haynes shall endeavor to conduct the proceedings and file a Report in such time to allow the Commission to render a final decision by the time constraint commanded by 6 Del. C. § 4915(e) and (f). Hearing Examiner Haynes is delegated the power, under 26 Del. C. § 102A, to determine the need for, and the content of, any public notices. In addition, Hearing Examiner Haynes is delegated the authority to grant or deny petitions to intervene. Francis J. Murphy, Jr., Esquire, is designated as Commission Counsel in this docket.

2. That, pursuant to 6 Del. C. § 4915(d), DaimlerChrysler Motors Company, LLC; Carman Dodge, Inc.; and Kirkwood Motors, Inc., are parties to this matter.

3. That, pursuant to 6 Del. C. § 4915(a), DaimlerChrysler Motors Company, LLC, is formally notified that a protest has been filed by Kirkwood Motors, Inc., challenging the notice of the proposed relocation filed December 22, 2003, and that DaimlerChrysler Motors Company, LLC, shall not relocate the new motor vehicle dealer as announced in that notice until this Commission has held a hearing, nor thereafter, unless this Commission has determined that there is good cause for permitting such relocation.

4. That the Commission reserves the jurisdiction and authority to enter such other or further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary